

**A Erect Engineering Press Work Sdn Bhd v Kesatuan
Kebangsaan Pekerja-Pekerja Perusahaan Alat-Alat
Pengangkutan dan Sekutu & Anor**

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1-25—

B 86 OF 1999

KC VOHRAH J

19 JUNE 2001

C *Labour Law — Trade union — Recognition — Fluctuation of membership — Zero membership — Whether union continue to exist — Whether union had locus standi to represent workers*

D The first respondent, the union, filed a complaint of ‘non-compliance’ against the applicant company for failure to comply with an award (Award No 425/93) regarding salary and bonuses of the workers that was handed down in 1993. A statement of reply to the complaint by the applicant company was filed. The issue of the union’s locus standi to represent the members was raised by the company by way of preliminary objection. This was dismissed by the Industrial Court in June 1999 (Award No 315/99). The applicant made an application for certiorari to set aside the award.

E **Held**, dismissing the application:

- F** (1) The court could not go outside Award No 315/99 and the pleadings and the record of proceedings exhibited in the affidavit in support of the motion for certiorari, and it would not propose to look at other documents that it was invited to look at (see p 196B–C).
- G** (2) The Industrial Court was correct in stating that the company had accorded recognition to the union and that the recognition continued till the date of the hearing of the case. The company at the date of the complaint and hearing was in existence and is still in existence. Likewise the union was, and is, in existence. The union had not been dissolved nor had it ceased to exist and there had been no cancellation or withdrawal of the certificate of registration by the Director General of Trade Unions under s 15 of the Trade Unions Act 1959 (see p 197A–C).
- H** (3) There was nothing to show that recognition of the union had been withdrawn. Membership in a union may fluctuate during the course of the life of the union once it is registered and it is conceivable that at some stage or other during its life the membership may well fall to zero but so long as the union continues to exist, workers from the company have the right to become members of the union even after the union had encountered zero membership at an earlier stage (see p 197C–D).
- I**

- (4) The Industrial Court found that there had been no withdrawal of the recognition of the union at any time and that at the date of hearing there were workers of the company who were members of the union. The Industrial Court rejected the preliminary objection that the union had no locus standi to represent the workers of the company. The court could see no error of law committed by the Industrial Court in coming to that conclusion (see p 197D–E).

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[Bahasa Malaysia summary]

Responden pertama, suatu kesatuan sekerja, telah memfailkan satu aduan ‘ketidakpatuhan’ terhadap syarikat pemohon kerana gagal untuk mematuhi satu award (Award No 425/93) berhubung gaji dan bonus pekerja-pekerja yang telah diberikan dalam tahun 1993. Satu pernyataan jawapan kepada pengadu oleh pemohon syarikat telah difailkan. Persoalan mengenai locus standi kesatuan tersebut untuk mewakili ahli-ahli telah ditimbulkan oleh syarikat tersebut melalui bantahan awal. Ini telah ditolak oleh Mahkamah Perusahaan dalam bulan Jun 1999 (Award No 315/99). Pemohon telah membuat satu permohonan untuk certiorari bagi mengetepikan award tersebut.

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Diputuskan, menolak permohonan tersebut:

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- (1) Mahkamah tidak boleh terkeluar daripada Award No 315/99 dan pliding-pling dan rekod prosiding yang diekshibitkan di dalam affidavit yang menyokong usul untuk certiorari, dan ia tidak akan mempertimbangkan dokumen-dokumen lain yang ia tidak sepatutnya pertimbangkan (lihat ms 196B–C).
- (2) Mahkamah Perusahaan adalah betul dengan menyatakan bahawa syarikat tersebut telah memberikan pengiktirafan kepada kesatuan tersebut dan pengiktirafan tersebut berterusan sehingga tarikh perbicaraan kes. Syarikat tersebut wujud pada masa aduan tersebut dan pada masa perbicaraan tersebut juga wujud dan masih wujud. Kesatuan tersebut tidak dibubarkan maupun telah tidak wujud lagi dan tiada pembatalan atau penarikan balik sijil pendaftaran oleh Ketua Pengarah Kersatuan Sekerja di bawah s 15 Akta Kesatuan Sekerja 1959 (lihat ms 197A–C).
- (3) Tiada apa-apa yang menunjukkan bahawa pengiktirafan kesatuan tersebut telah ditarik balik. Keahlian di dalam satu kesatuan mungkin berubah sepanjang hayat kesatuan tersebut sejak daripada pendaftarannya dan memang boleh dijangka bahawa pada satu tahap semasa hayatnya keahlian mungkin jatuh ke paras kosong tetapi selagi kesatuan tersebut terus wujud, pekerja-pekerja daripada syarikat tersebut mempunyai hak untuk menjadi ahli kesatuan tersebut walaupun selepas kesatuan tersebut mengalami ketiadaan keahlian pada peringkat awal (lihat ms 197C–D).

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- A (4) Mahkamah Perusahaan mendapati bahawa tiada penarikan balik pengiktirafan kesatuan tersebut pada bila-bila masa dan bahawa pada tarikh perbicaraan terdapat pekerja-pekerja syarikat tersebut yang merupakan ahli-ahli kesatuan tersebut. Mahkamah Perusahaan menolak bantahan awal bahawa kesatuan tersebut
- B tiada locus standi untuk mewakili pekerja-pekerja syarikat tersebut. Mahkamah tidak dapat melihat apa-apa kesilapan di sisi undang-undang yang dilakukan oleh Mahkamah Perusahaan semasa tiba kepada kesimpulan tersebut (lihat ms 197D–E).]

Notes

- C For cases on recognition of trade unions, see 8(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1416–1435.

Cases referred to

- D *Hang Chiang High School, Penang v National Union of Teachers in Independent Schools, West Malaysia* (Award No 49 of 1988)
Kesatuan Pekerja-Pekerja Dalam Perkhidmatan Perubatan & Kesihatan Swasta v Polyclinic Chin Ipoh (Award No 7 of 1978)
Korea Development Corporation v Construction Workers Union (Award No 13 of 1983) [1983] 2 ILR 319

Legislation referred to

Industrial Relations Act 1967 s 56(1)
Trade Unions Act 1959 s 15

- F *Anthony Gomez (Gomez & Associates)* for the applicant.
Kamarul Hisham (Daim & Gamany) for the first respondent.

KC Vohrah J.: This is an application for certiorari to set aside Industrial Court Award No 315 of 1999.

- G On 9 September 1998, the first respondent, Kesatuan Kebangsaan Pekerja-Pekerja Alat-Alat Pengangkutan dan Sekutu ('the Union'), filed a complaint of 'non-compliance' against Erect Engineering Press Work Sdn Bhd ('the company') for failure to comply with an award (Award No 425/93) regarding the salary and bonuses of the workers that was
- H handed down on 27 December 1993.

A statement of reply to the complaint by the company dated 4 March 1999 was filed.

- I At the hearing on 12 March 1999 before the Industrial Court on the complaint, the issue of locus standi of the union in regard to it representing the members was raised. The issue of locus standi, raised by the company by way of a preliminary objection, was dismissed by the Industrial Court on 29 June 1999.

It had been argued before the Industrial Court that from 1996 to 1997, all workers from the company had ceased to be members of the union.

The argument of the company is that the union does not have the locus to represent the members since the members had left the union at some point in time and therefore the union, as of that point when the last members left, did not have any members to represent. The further argument was that it followed, therefore, that the union had ceased to have the right to represent the workers.

The court cannot go outside the Award No 315 of 1999 and the pleadings and the record of proceedings exhibited in the affidavit supporting the motion for certiorari, and I do not propose to look at other documents that this court was invited to look at.

The Industrial Court recognized that the union was established at the latest in 1993, bearing in mind that the union represented its members who worked in the company in Award No 425 of 1993. The court observed that, and it relied on exhs C04 (Form N), which was the yearly statement sent to the Director-General of Trade Unions, that the Union did not have members from the company for the period 1 April 1996 to 31 March 1997. The Industrial Court noted, however, that when the complaint was made under s 56(1) of the Industrial Relations Act 1967, the union had members who worked in the company and it noted that this was not disputed by the company.

The Industrial Court examined three Industrial Court cases viz, *Kesatuan Pekerja-Pekerja Dalam Perkhidmatan Perubatan & Kesihatan Swasta v Polyclinic Chin Ipoh* (Award No 7 of 1978), *Korea Development Corporation v Construction Workers Union* (Award No 1 of 1983) [1983] 2 ILR 319 and *Hang Chiang High School, Penang v National Union of Teachers in Independent Schools, West Malaysia* (Award No 49 of 1988) and ruled that the three cases did not support the argument of the company that the union ceased to represent the workers from the company when all workers had ceased to be members of the union during the period 1 April 1996 to 31 March 1997. The court also relied on Award No 173 of 1983 where Harun J (as he then was) had observed that for so long as the union exists, even though one employee of the company is left, the union stands recognized.

This is what Harun J stated at 320:

The law and procedure on Union recognition is perhaps not generally known. A trade union of workmen may organize the employees of a company who are eligible for membership in accordance with the rules of the trade union. In practice, when 5% or more of the employees join the trade union, it claims recognition from the company. On receipt of the claim, the company may either accord recognition or apply to the Director-General of Industrial Relations for a membership check. This check is carried out by the Registrar of Trade Unions and for purposes of determining whether the majority of employees of the company are members of the union, the date of the claim for recognition is the date used. It does not matter if at the time of the check, the employees had resigned from the union or that more employees had been employed by the company. If after the check, the company is still not satisfied,

A it may appeal to the Minister. The decision of the Minister is final. Once recognition has been accorded wither by the company or by the decision of the Minister, the recognition stands for so long as the union exists even though only one employee of the company is left as a member of the union.

B In the present case, the Industrial Court was correct in stating that the company had accorded recognition to the union and that the recognition continued till the date of the hearing of the case. The company was at the date of the complaint and hearing in existence and is still in existence. Likewise the union was, and is, in existence. The union has not been dissolved nor has it ceased to exist and there has been no cancellation or withdrawal of the certificate of registration by the Director-General of
C Trade Unions under s 15 of the Trade Unions Act 1959. In other words, both the company and the union were in existence at the time the complaint was made by the union and at the date of hearing. There is nothing to show that recognition of the union has been withdrawn. Membership in a union may fluctuate during the course of the life of the union once it is registered and it is conceivable that at some stage or other during its life the
D membership may well fall to zero but so long as the union continues to exist, workers from the company have the right to become members of the union even after the union had encountered zero membership at an earlier stage.

E The Industrial Court found that there had been no withdrawal of the recognition of the union at any time and that at the date of hearing there were workers of the company who were members of the union. The Industrial Court rejected the preliminary objection that the union had no locus standi to represent the workers of the company.

I can see no error of law committed by the Industrial Court in coming to that conclusion.

F The application is dismissed with costs.

Application dismissed with costs.

Reported by Wong Ee Lynn

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